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TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A "PRIOR" PATENT

Docket Number (Optional)

313-006.3

In re Application of: Francis J. Maguire

Application No.: 10/826,820

Filed: April 16, 2004

For: METHOD AND APPARATUS FOR EYE TRACKING IN A VEHICLE

Francis J. Maguire

The owner*, _____, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 6,359,601 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

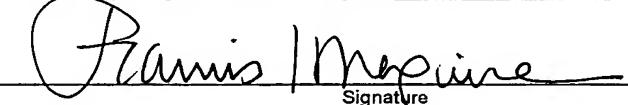
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- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
- is reissued; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. The undersigned is an attorney or agent of record. Reg. No. 31,391



Signature

Francis J. Maguire

Typed or printed name

9 MAR '05

Date(203) 261-1234

Telephone Number

- Terminal disclaimer fee under 37 CFR 1.20(d) included.

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*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
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This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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DOCKET: 313-006.3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of: **Francis J. Maguire** :

Serial No.: **10/826,820** : Examiner: **Xiao Min Wu**

Filed: **April 16, 2004** : Group Art Unit: **2674**

For: **METHOD AND APPARATUS FOR EYE TRACKING IN A VEHICLE**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REPLY AFTER FINAL ACTION WITH TERMINAL DISCLAIMER FILED
UNDER RULE 321(c) WITH FEE UNDER RULE 20(d)**

Sir:

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Marilyn O'Connell
Marilyn O'Connell

Dated: March 9, 2005

REMARKS

This letter is in response to the final action mailed February 8, 2005 in which the Examiner maintained the obviousness-type double patenting rejection for the same reason as before. In reply, the Examiner is again referred to the applicant's remarks in the applicant's response to the first office action.

It is well established that the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

Therefore, the enclosed terminal disclaimer filed under 37 CFR 1.321(c) with the \$55 small entity fee of 37 CFR 1.20(d) is not an admission that the Examiner's reasons are correct but is merely filed to obviate the rejection.

Allowance is requested.

Respectfully submitted,



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